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October 6, 2011

VIA FEDEX

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Federal Election Commission
999 E Street, NW
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CELA

Re: Matter Under Review 6488 (Eli Publishing, L.C. & Steven Lund)

Dear Mr. Jordan:

This letter is a response by counsel on behalf of Eli Publishing, L.C. and Steven Lund (collectively, "Respondents") to the complaint in Matter Under Review ("MUR") 6488.

The allegations in the complaint are insufficient to show that Respondents violated 2 U.S.C. §§ 441f, 432, 433, or 434. The Commission should note at the outset that complainants' alleged "reason to believe" the above-alleged violations took place is based expressly and entirely "on published reports." The complaint, however, cites one online news story which does not substantiate the complainants' claims. According to complainant's allegations, the media report that provides the sole basis for this complaint merely conveyed that Eli Publishing "do[es]n't appear to do any substantial business,"¹ has "no presence on the internet,"² and its registered address was that of an accounting firm.³ The report further allegedly stated that Mr. Lund told the media outlet that he made the contribution "through a corporation he created to publish a book years ago because donating through a corporation has accounting advantages."⁴ With this report as complainants' sole basis for alleging violations, it is clear that the complaint is little more than sheer speculation.

¹ Complaint at ¶ 5.

² *Id.* at ¶ 9.

³ *Id.*

⁴ *Id.* at ¶ 10.

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Far more is required to justify an FEC inquiry than that which complainants have alleged. If such a scant set of allegations were adequate to justify an FEC investigation, every corporate donation could trigger an FEC investigation based upon a claim that, citing secondary source news reports, the corporation's business activities were unknown to the complainant. That is clearly not the purpose of the Act, nor is it the proper role of the FEC in enforcing it. Both to conserve the Commission's resources and avoid putting Respondents through a burdensome and costly ordeal of an inquiry founded on such a weakly-based complaint, this matter should be closed.

In addition to lacking even the most minimal basis in fact, the complaint should be dismissed because the allegations therein are without legal merit. As a threshold matter, the subject funds were provided to Restore Our Future ("ROF"), an independent-expenditure political action committee that is registered with the FEC. No basis is asserted in the complaint upon which to conclude that ROF's reporting and disclosure obligations have not been or will not be met in connection with the subject transactions.

Although the complaint alleges that Eli Publishing provided funds to ROF, nothing in the complaint suggests that the funds provided by Eli Publishing to Restore Our Future are from any source other than its corporate funds, a lawful transaction on its face.

Additionally, the complaint fails to allege any facts to suggest that Eli Publishing is or has ever been a political action committee. Eli Publishing is a single-member Utah Limited Liability Company created in 1997 for the purpose of publishing a range of specialty books. Since that time, it has operated as a commercial business entity, publishing one book with the intent to publish additional books. As alleged in the complaint, Mr. Lund is its registered agent and its founder.⁵ Complainants' wholly unsupported claim that Eli Publishing is a "political committee" fails on its face because the company's business purpose is commercial, not political. Therefore, the organization, registration, and disclosure requirements set forth in 2 U.S.C. §§ 432, 433, and 434 do not apply to the company.

The complaint does not allege that at anytime during the fourteen years since its creation, Eli Publishing received contributions or made expenditures, required indicia of a "committee." See 2 U.S.C. § 431(4)(A); 11 C.F.R. § 100.5(a). The complaint does not allege that Eli Publishing ever endorsed any candidate for federal office. Nor does it allege any facts that could support a conclusion that Eli Publishing is anything other than a business entity whose major purpose is to engage in commerce, not to influence the "nomination or election of a candidate" for federal office as would be required for it to constitute a political action committee. See *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); FEC Advisory Opinion 2009-13 at 5 (concluding an LLC was not a "political committee" under the Act" because it was "organized and operated for commercial purposes and not for purposes of nominating or electing a candidate").

The only proffered basis for the allegations that Eli Publishing is a political action committee is a single news report suggesting that "Eli Publishing . . . do[es]n't seem to do any business" because the company does not have an internet presence and employees at a separate accounting

⁵ *Id.* at ¶¶ 7, 10.

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firm operating at the company's address reportedly "weren't aware of the compan[y]'s activities."⁶ Indeed, it should be noted that the complaint's own factual allegations are inconsistent as to Eli Publishing's business activities insofar as the complaint also cites the same media report to state that corporation was established to publish a book,⁷ which is clearly a commercial activity.

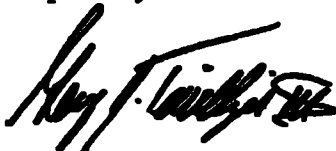
Thus, the single online news report that provides the sole basis for the complaint is insufficient to show that Eli Publishing is anything but a commercial business entity. It is certainly not sufficient to make even a prima facie showing that Eli Publishing is a political action committee and thus justify an FEC investigation. See FEC Guidebook for Complainants and Respondent on the FEC Enforcement Process, at 12-13 (stating that a determination of "no reason to believe" is appropriate where "a complaint alleges a violation but is either not credible or so vague that an investigation would be unwarranted").

Because Eli Publishing is not a committee, it has no legal obligation to comply with, and therefore could not have violated FECA organization, registration, and disclosure requirements imposed on committees. See 2 U.S.C. §§ 432, 433, or 434. The FEC should dismiss the complaint for lacking factual support and legal merit.

For the foregoing reasons, there is no reason to believe that Eli Publishing or Mr. Lund violated any laws as alleged in the complaint. This matter should, therefore, be closed as it lacks factual support and legal merit.

If the FEC requires any additional information or clarifications from Eli Publishing and/or Mr. Lund to evaluate the allegations in this matter, please do not hesitate to contact me. I will be glad to supplement this response, as needed or if requested by the Commission or its staff.

Respectfully submitted,



George J. Terwilliger III

⁶ *Id.* at ¶ 9.

⁷ *Id.* at ¶ 10.